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SENATE BILL 6318

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State of Washington

56th Legislature

2000 Regular Session

By Senators Rasmussen, Morton, Stevens and Swecker

Read first time 01/13/2000. Referred to Committee on Agriculture & Rural Economic Development.

1 AN ACT Relating to dairy nutrients; amending RCW 90.64.010,  
2 90.64.023, 90.64.026, 90.64.050, 90.64.080, 90.64.130, 90.64.140, and  
3 90.64.800; creating new sections; and providing an expiration date.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** The legislature finds that substantial  
6 progress has been made in implementing the dairy nutrient management  
7 act since its enactment in 1998. Though the involved agencies and  
8 interest groups are cooperatively working to meet the deadlines  
9 established in that legislation, insufficiency of funding or unexpected  
10 obstacles, if not quickly remedied, will cause a delay in the  
11 implementation of the legislation and noncompliance with established  
12 deadlines.

13 The purpose of this act is to combine the advisory and oversight  
14 committee with the dairy nutrient task force that includes legislative  
15 participation to provide continuity to monitoring and problem-solving  
16 efforts.

1        NEW SECTION.    **Sec. 2.**    (1) A dairy nutrient management task force  
2 is established. The task force shall be comprised of up to thirteen  
3 members, appointed as follows:

4        (a) Two members of the house of representatives, one from each  
5 major caucus, appointed by the co-speakers of the house of  
6 representatives;

7        (b) Two members of the senate, one from each major caucus,  
8 appointed by the president of the senate;

9        (c) A representative of the department of ecology, appointed by the  
10 director of ecology;

11       (d) A representative of the state conservation commission,  
12 appointed by its executive secretary;

13       (e) A representative of local conservation districts, appointed by  
14 the president of a state-wide association of conservation districts;

15       (f) Three active dairy farmers or representatives of dairy farmers,  
16 appointed by a state-wide organization representing dairy farmers in  
17 the state, who shall represent the different regions and different  
18 sizes of dairy operations;

19       (g) A representative of an environmental interest organization with  
20 familiarity and expertise in water quality issues, appointed by  
21 agreement of the co-speakers of the house of representatives and the  
22 president of the senate;

23       (h) A representative of shellfish growers, appointed by the  
24 president of a state-wide association of shellfish growers;

25       (i) A representative of local health districts appointed by the  
26 president of a state-wide association of local health districts; and

27       (j) In addition to other members appointed under this subsection  
28 (1):

29       (i) The executive director of the state conservation commission  
30 shall request that a representative of the federal natural resource  
31 conservation service be appointed by the state conservationist; and

32       (ii) The director of the department of ecology shall request that  
33 a representative of the federal environmental protection agency be  
34 appointed by the regional director of the environmental protection  
35 agency.

36       (2) The task force shall meet three times per year, or more if  
37 necessary, to monitor the progress and provide oversight of the dairy  
38 nutrient management program administered by the department of ecology,  
39 the conservation commission, and local conservation districts. The

1 task force shall include but not be limited to examination of the  
2 following topics:

3 (a) Determining whether the necessary progress is being attained so  
4 that deadlines established in chapter 262, Laws of 1998, for the  
5 development, approval, implementation, and final certification of dairy  
6 nutrient management plans will be achieved;

7 (b) Monitoring the development of and review recommendations for  
8 adequate funding for the various components of the program;

9 (c) Successful incorporation of engineering services into the  
10 existing system of technical assistance for the design and construction  
11 of dairy nutrient management plans; and

12 (d) Resolution of the conflict between the state public records  
13 laws and federal privacy laws in regards to processing of requests for  
14 dairy nutrient management plans when requests are submitted to staff  
15 that operate under different directives but share common office space.

16 (3) By December 20th of each year, the task force shall:

17 (a) Provide recommendations to the department of ecology, to the  
18 conservation commission, and to local conservation districts for  
19 improvements in the implementation of the dairy nutrient management  
20 program; and

21 (b) Provide recommendations to the legislature on statutory changes  
22 to clarify and improve the operations of various facets of the program.

23 (4) The task force shall convene as soon as possible upon  
24 appointment of its members. The task force shall elect a chair or co-  
25 chairs and adopt rules for conducting the business of the task force.  
26 Staff support for the task force shall be provided by the department of  
27 ecology.

28 (5) This section expires June 30, 2004.

29 **Sec. 3.** RCW 90.64.010 and 1998 c 262 s 2 are each amended to read  
30 as follows:

31 Unless the context clearly requires otherwise, the definitions in  
32 this section apply throughout this chapter.

33 (1) (~~"Advisory and oversight committee" means a balanced committee~~  
34 ~~of agency, dairy farm, and interest group representatives convened to~~  
35 ~~provide oversight and direction to the dairy nutrient management~~  
36 ~~program.~~

37 (2)) "Bypass" means the intentional diversion of waste streams  
38 from any portion of a treatment facility.

1       (~~(3)~~) (2) "Catastrophic" means a tornado, hurricane, earthquake,  
2 flood, or other extreme condition that causes an overflow from a  
3 required waste retention structure.

4       (~~(4)~~) (3) "Certification" means:

5       (a) The acknowledgment by a local conservation district that a  
6 dairy producer has constructed or otherwise put in place the elements  
7 necessary to implement his or her dairy nutrient management plan; and

8       (b) The acknowledgment by a dairy producer that he or she is  
9 managing dairy nutrients as specified in his or her approved dairy  
10 nutrient management plan.

11       (~~(5)~~) (4) "Chronic" means a series of wet weather events that  
12 precludes the proper operation of a dairy nutrient management system  
13 that is designed for the current herd size.

14       (~~(6)~~) (5) "Conservation commission" or "commission" means the  
15 conservation commission under chapter 89.08 RCW.

16       (~~(7)~~) (6) "Conservation districts" or "district" means a  
17 subdivision of state government organized under chapter 89.08 RCW.

18       (~~(8)~~) (7) "Concentrated dairy animal feeding operation" means a  
19 dairy animal feeding operation subject to regulation under this chapter  
20 which the director designates under RCW 90.64.020 or meets the  
21 following criteria:

22       (a) Has more than seven hundred mature dairy cows, whether milked  
23 or dry cows, that are confined; or

24       (b) Has more than two hundred head of mature dairy cattle, whether  
25 milked or dry cows, that are confined and either:

26       (i) From which pollutants are discharged into navigable waters  
27 through a manmade ditch, flushing system, or other similar manmade  
28 device; or

29       (ii) From which pollutants are discharged directly into surface or  
30 ground waters of the state that originate outside of and pass over,  
31 across, or through the facility or otherwise come into direct contact  
32 with the animals confined in the operation.

33       (~~(9)~~) (8) "Dairy animal feeding operation" means a lot or  
34 facility where the following conditions are met:

35       (a) Dairy animals that have been, are, or will be stabled or  
36 confined and fed for a total of forty-five days or more in any twelve-  
37 month period; and

38       (b) Crops, vegetation forage growth, or postharvest residues are  
39 not sustained in the normal growing season over any portion of the lot

1 or facility. Two or more dairy animal feeding operations under common  
2 ownership are considered, for the purposes of this chapter, to be a  
3 single dairy animal feeding operation if they adjoin each other or if  
4 they use a common area for land application of wastes.

5 ~~((10))~~ (9) "Dairy farm" means any farm that is licensed to  
6 produce milk under chapter 15.36 RCW.

7 ~~((11))~~ (10) "Dairy nutrient" means any organic waste produced by  
8 dairy cows or a dairy farm operation.

9 ~~((12))~~ (11) "Dairy nutrient management plan" means a plan meeting  
10 the requirements established under RCW 90.64.026.

11 ~~((13))~~ (12) "Dairy nutrient management technical assistance team"  
12 means one or more professional engineers and local conservation  
13 district employees convened to serve one of four distinct geographic  
14 areas in the state.

15 ~~((14))~~ (13) "Dairy producer" means a person who owns or operates  
16 a dairy farm.

17 ~~((15))~~ (14) "Department" means the department of ecology under  
18 chapter 43.21A RCW.

19 ~~((16))~~ (15) "Director" means the director of the department of  
20 ecology, or his or her designee.

21 ~~((17))~~ (16) "Upset" means an exceptional incident in which there  
22 is an unintentional and temporary noncompliance with technology-based  
23 permit effluent limitations because of factors beyond the reasonable  
24 control of the dairy. An upset does not include noncompliance to the  
25 extent caused by operational error, improperly designed treatment  
26 facilities, inadequate treatment facilities, lack of preventive  
27 maintenance, or careless or improper operation.

28 ~~((18))~~ (17) "Violation" means the following acts or omissions:

29 (a) A discharge of pollutants into the waters of the state, except  
30 those discharges that are due to a chronic or catastrophic event, or to  
31 an upset as provided in 40 C.F.R. Sec. 122.41, or to a bypass as  
32 provided in 40 C.F.R. Sec. 122.41, and that occur when:

33 (i) A dairy producer has a current national pollutant discharge  
34 elimination system permit with a wastewater system designed, operated,  
35 and maintained for the current herd size and that contains all process-  
36 generated wastewater plus average annual precipitation minus  
37 evaporation plus contaminated storm water runoff from a twenty-five  
38 year, twenty-four hour rainfall event for that specific location, and  
39 the dairy producer has complied with all permit conditions, including

1 dairy nutrient management plan conditions for appropriate land  
2 application practices; or

3 (ii) A dairy producer does not have a national pollutant discharge  
4 elimination system permit, but has complied with all of the elements of  
5 a dairy nutrient management plan that: Prevents the discharge of  
6 pollutants to waters of the state, is commensurate with the dairy  
7 producer's current herd size, and is approved and certified under RCW  
8 90.64.026;

9 (b) Failure to register as required under RCW 90.64.017; or

10 (c) The lack of an approved dairy nutrient management plan by July  
11 1, 2002; or

12 (d) The lack of a certified dairy nutrient management plan for a  
13 dairy farm after December 31, 2003.

14 **Sec. 4.** RCW 90.64.023 and 1998 c 262 s 5 are each amended to read  
15 as follows:

16 (1) By October 1, 1998, the department shall initiate an inspection  
17 program of all dairy farms in the state. The purpose of the  
18 inspections is to:

19 (a) Survey for evidence of violations;

20 (b) Identify corrective actions for actual or imminent discharges  
21 that violate or could violate the state's water quality standards;

22 (c) Monitor the development and implementation of dairy nutrient  
23 management plans; and

24 (d) Identify dairy producers who would benefit from technical  
25 assistance programs.

26 (2) Local conservation district employees may, at their discretion,  
27 accompany department inspectors on any scheduled inspection of dairy  
28 farms except random, unannounced inspections.

29 (3) Follow-up inspections shall be conducted by the department to  
30 ensure that corrective and other actions as identified in the course of  
31 initial inspections are being carried out. The department shall also  
32 conduct such additional inspections as are necessary to ensure  
33 compliance with state and federal water quality requirements, provided  
34 that all licensed dairy farms shall be inspected once within two years  
35 of the start of this program. The department(~~(, in consultation with~~  
36 ~~the advisory and oversight committee established in section 8 of this~~  
37 ~~act,~~) shall develop performance-based criteria to determine the  
38 frequency of inspections.

1 (4) Dairy farms shall be prioritized for inspection based on the  
2 development of criteria that include, but are not limited to, the  
3 following factors:

4 (a) Existence or implementation of a dairy nutrient management  
5 plan;

6 (b) Proximity to impaired waters of the state; and

7 (c) Proximity to all other waters of the state. (~~The criteria~~  
8 ~~developed to implement this subsection (4) shall be reviewed by the~~  
9 ~~advisory and oversight committee.~~)

10 **Sec. 5.** RCW 90.64.026 and 1998 c 262 s 6 are each amended to read  
11 as follows:

12 (1) Except for those producers who already have a certified dairy  
13 nutrient management plan as required under the terms and conditions of  
14 an individual or general national pollutant discharge elimination  
15 system permit, all dairy producers licensed under chapter 15.36 RCW,  
16 regardless of size, shall prepare a dairy nutrient management plan. If  
17 at any time a dairy nutrient management plan fails to prevent the  
18 discharge of pollutants to waters of the state, it shall be required to  
19 be updated.

20 (2) By November 1, 1998, the conservation commission(~~(, in~~  
21 ~~conjunction with the advisory and oversight committee established under~~  
22 ~~section 8 of this act)) shall develop a document clearly describing the  
23 elements that a dairy nutrient management plan must contain to gain  
24 local conservation district approval.~~

25 (3) In developing the elements that an approved dairy nutrient  
26 management plan must contain, the commission may authorize the use of  
27 other methods and technologies than those developed by the natural  
28 resources conservation service (~~when such alternatives have been~~  
29 ~~evaluated by the advisory and oversight committee)). Alternative  
30 methods and technologies shall meet the standards and specifications  
31 of:~~

32 (a) The natural resources conservation service as modified by the  
33 geographically based standards developed under RCW 90.64.140; or

34 (b) A professional engineer with expertise in the area of dairy  
35 nutrient management.

36 (4) (~~In evaluating alternative technologies and methods, the~~  
37 ~~principal objectives of the committee's evaluation shall be~~  
38 ~~determining:~~

1       ~~(a) Whether there is a substantial likelihood that, once~~  
2 ~~implemented, the alternative technologies and methods would not violate~~  
3 ~~water quality requirements;~~

4       ~~(b) Whether more cost effective methods can be successfully~~  
5 ~~implemented in some or all categories of dairy operations; and~~

6       ~~(c) Whether the technologies and methods approved or provided by~~  
7 ~~the natural resources conservation service for use by confined animal~~  
8 ~~feeding operations are necessarily required for other categories of~~  
9 ~~dairy operations.~~

10       ~~In addition, the committee shall encourage the conservation~~  
11 ~~commission and the conservation districts to apply in dairy nutrient~~  
12 ~~management plans technologies and methods that are appropriate to the~~  
13 ~~needs of the specific type of operation and the specific farm site and~~  
14 ~~to avoid imposing requirements that are not necessary for the specific~~  
15 ~~dairy producer to achieve compliance with water quality requirements.~~

16       ~~(5))~~ Such plans shall be submitted for approval to the local  
17 conservation district where the dairy farm is located, and shall be  
18 approved by conservation districts no later than by July 1, 2002. The  
19 conservation commission, in conjunction with conservation districts,  
20 shall develop a state-wide schedule of plan development and approval to  
21 ensure adequate resources are available to have all plans approved by  
22 July 1, 2002.

23       ~~((6))~~ (5) If a dairy producer leases land for dairy production  
24 from an owner who has prohibited the development of capital  
25 improvements, such as storage lagoons, on the leased property, the  
26 dairy producer shall indicate in his or her dairy nutrient management  
27 plan that such improvements are prohibited by the landowner and shall  
28 describe other methods, such as land application, that will be employed  
29 by the dairy producer to manage dairy nutrients.

30       ~~((7))~~ (6) Notwithstanding the timelines in this section, any  
31 dairy farm licensed after September 1, 1998, shall have six months from  
32 the date of licensing to develop a dairy nutrient management plan and  
33 another eighteen months to fully implement that plan.

34       ~~((8))~~ (7) If a plan contains the elements identified in  
35 subsection (2) of this section, a conservation district shall approve  
36 the plan no later than ninety days after receiving the plan. If the  
37 plan does not contain the elements identified in subsection (2) of this  
38 section, the local conservation district shall notify the dairy  
39 producer in writing of modifications needed in the plan no later than



1 ninety days after receiving the plan. The dairy producer shall provide  
2 a revised plan that includes the needed modifications within ninety  
3 days of the date of the local conservation district notification. If  
4 the dairy producer does not agree with, or otherwise takes exception  
5 to, the modifications requested by the local conservation district, the  
6 dairy producer may initiate the appeals process described in RCW  
7 90.64.028 within thirty days of receiving the letter of notification.

8 ~~((+9+))~~ (8) An approved plan shall be certified by a conservation  
9 district and a dairy producer when the elements necessary to implement  
10 the plan have been constructed or otherwise put in place, and are being  
11 used as designed and intended. A certification form shall be developed  
12 by the conservation commission for use state-wide and shall provide for  
13 a signature by both a conservation district representative and a dairy  
14 producer. Certification forms shall be signed by December 31, 2003,  
15 and a copy provided to the department for recording in the data base  
16 established in RCW 90.64.130.

17 ~~((+10+))~~ (9) The ability of dairy producers to comply with the  
18 planning requirements of this chapter depends, in many cases, on the  
19 availability of federal and state funding to support technical  
20 assistance provided by local conservation districts. Dairy producers  
21 shall not be held responsible for noncompliance with the planning  
22 requirements of this chapter if conservation districts are unable to  
23 perform their duties under this chapter because of insufficient  
24 funding.

25 **Sec. 6.** RCW 90.64.050 and 1998 c 262 s 12 are each amended to read  
26 as follows:

27 (1) The department has the following duties:

28 (a) Identify existing or potential water quality problems resulting  
29 from dairy farms through implementation of the inspection program in  
30 RCW 90.64.023;

31 (b) Inspect a dairy farm upon the request of a dairy producer;

32 (c) Receive, process, and verify complaints concerning discharge of  
33 pollutants from all dairy farms;

34 (d) Determine if a dairy-related water quality problem requires  
35 immediate corrective action under the Washington state water pollution  
36 control laws, chapter 90.48 RCW, or the Washington state water quality  
37 standards adopted under chapter 90.48 RCW. The department shall  
38 maintain the lead enforcement responsibility;

1 (e) Administer and enforce national pollutant discharge elimination  
2 system permits for operators of concentrated dairy animal feeding  
3 operations, where required by federal regulations and state laws or  
4 upon request of a dairy producer;

5 (~~(f) ((Participate on the advisory and oversight committee;~~

6 ~~(g))~~) Encourage communication and cooperation between local  
7 department personnel and the appropriate conservation district  
8 personnel;

9 (~~((h))~~) (g) Require the use of dairy nutrient management plans as  
10 required under this chapter for entities required to plan under this  
11 chapter; and

12 (~~((i))~~) (h) Provide to the commission (~~(and the advisory and~~  
13 ~~oversight committee)~~) an annual report of dairy farm inspection and  
14 enforcement activities.

15 (2) The department may not delegate its responsibilities in  
16 enforcement.

17 **Sec. 7.** RCW 90.64.080 and 1998 c 262 s 14 are each amended to read  
18 as follows:

19 (1) The conservation commission has the following duties:

20 (a) Provide assistance as may be appropriate to the conservation  
21 districts in the discharge of their responsibilities as management  
22 agencies in dairy nutrient management program implementation;

23 (b) Provide coordination for conservation district programs at the  
24 state level through special arrangements with appropriate federal and  
25 state agencies, including oversight of the review, approval, and  
26 certification of dairy nutrient management plans;

27 (c) Inform conservation districts of activities and experiences of  
28 other conservation districts relative to agricultural water quality  
29 protection, and facilitate an interchange of advice, experience, and  
30 cooperation between the districts;

31 (d) Provide an informal hearing for disputes between dairy  
32 producers and local conservation districts pertaining to: (i) Denial  
33 of approval or denial of certification of dairy nutrient management  
34 plans; (ii) modification or amendment of plans; (iii) conditions  
35 contained in plans; (iv) application of any dairy nutrient management  
36 practices, standards, methods, and technologies to a particular dairy  
37 farm; and (v) the failure to adhere to the plan review and approval  
38 timelines identified in RCW 90.64.026. An informal hearing may also

1 provide an opportunity for dairy producers who are constrained from  
2 timely compliance with the planning requirements of this chapter  
3 because of financial hardship or local permitting delays to petition  
4 for additional time to comply;

5 (e) Encourage communication between the conservation district  
6 personnel and local department personnel;

7 ~~(f) ((Accept nominations and appoint members to serve on the  
8 advisory and oversight committee with advice of the Washington  
9 association of conservation districts and the department;~~

10 ~~(g) Provide a cochair to the advisory and oversight committee;~~

11 ~~(h))~~ Report to the legislature by December 1st of each year until  
12 2003 on the status of dairy nutrient management planning and on the  
13 technical assistance provided to dairy producers in carrying out the  
14 requirements of this chapter; and

15 ~~((i))~~ (g) Work with the department to provide communication  
16 outreach to representatives of agricultural and environmental  
17 organizations to receive feedback on implementation of this chapter.

18 (2) The commission's capability to carry out its responsibilities  
19 under this chapter is contingent upon the availability of funding and  
20 resources to implement a dairy nutrient management program.

21 **Sec. 8.** RCW 90.64.130 and 1998 c 262 s 9 are each amended to read  
22 as follows:

23 (1) By October 1, 1998, the department(~~(, in consultation with the  
24 advisory and oversight committee,))~~ shall develop and maintain a data  
25 base to account for the implementation of this chapter.

26 (2) The data base shall track registrations; inspection dates and  
27 results, including findings of violations; regulatory and enforcement  
28 actions; and the status of dairy nutrient management plans. In  
29 addition, the number of dairy farm inspections by inspector shall be  
30 tallied by month. ~~((A summary of data base information shall be  
31 provided quarterly to the advisory and oversight committee.))~~

32 (3) Any information entered into the data base by the department  
33 about any aspect of a particular dairy operation may be reviewed by the  
34 affected dairy producer upon request. The department shall correct any  
35 information in the data base upon a showing that the information is  
36 faulty or inaccurate. Complaints that have been filed with the  
37 department and determined to be unfounded, invalid, or without merit  
38 shall not be recorded in the data base. Appeals of decisions related

1 to dairy nutrient management plans to the pollution control hearings  
2 board or to any court shall be recorded, as well as the decisions of  
3 those bodies.

4 **Sec. 9.** RCW 90.64.140 and 1998 c 262 s 10 are each amended to read  
5 as follows:

6 (1) The conservation commission shall establish four dairy nutrient  
7 management technical assistance teams by June 1, 1998. The teams shall  
8 be geographically located throughout the state. Each team shall  
9 consist of one or more professional engineers, local conservation  
10 district employees, and dairy nutrient management experts from  
11 Washington State University. The purpose of the teams is to:

12 (a) Actively develop and promote new cost-effective approaches for  
13 managing dairy nutrients; and

14 (b) Assist dairy farms in developing dairy nutrient management  
15 plans.

16 (2) By January 1, 1999, each team shall develop one or more initial  
17 sets of standards and specifications to assist dairy producers in  
18 developing and implementing dairy nutrient management plans. Standards  
19 and specifications developed by a technical assistance team shall be  
20 appropriate to the soils and other conditions within that geographic  
21 area (~~and shall be reviewed by the advisory and oversight committee~~).

22 **Sec. 10.** RCW 90.64.800 and 1998 c 262 s 17 are each amended to  
23 read as follows:

24 The department, in conjunction with the conservation commission  
25 (~~and advisory and oversight committee~~), shall report to the  
26 legislature by December 1st of each year until 2003, on progress made  
27 in implementing chapter 262, Laws of 1998. At a minimum, the reports  
28 shall include data on inspections, the status of dairy nutrient  
29 planning, compliance with water quality standards, and enforcement  
30 actions. The report shall also provide recommendations on how  
31 implementation of chapter 262, Laws of 1998 could be facilitated for  
32 dairy producers and generally improved.

33 The conservation commission shall include in the report to the  
34 legislature filed December 1, 1999, an evaluation of whether the fiscal  
35 resources available to the commission, to conservation districts, and  
36 to Washington State University dairy nutrient management experts are  
37 adequate to fund the technical assistance teams established under RCW

1 90.64.140 and to develop and certify plans as required by the schedule  
2 established in RCW 90.64.026. If the funding is insufficient, the  
3 report shall include an estimate of the amount of funding necessary to  
4 accomplish the schedule contained in RCW 90.64.026.

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